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February 22, 2007

Dear Members of the House Education Committee:

I represent Spring Creek Lodge Academy and I attended the hearing on House Bill 769, which was before your committee on Wednesday, February 21, 2007.

During that hearing, James Manley, an attorney representing the family of a 16 year old child who committed suicide while at Spring Creek Lodge Academy in October 2004, presented inaccurate testimony in opposition to House Bill 769. Mr. Manley testified that the student was denied any kind of professional treatment and access to therapy while at Spring Creek.

I represented Spring Creek through the DPHHS proceedings that resulted from this case. Enclosed for your information is a copy of the DPHHS Hearing Examiner's Order in this case, which was affirmed by the First Judicial District Court, Lewis and Clark County. The Order clearly shows that Mr. Manley's statements to the Committee are not accurate. Summarizing the Order, the record indicates the child was receiving therapy and she had seen a medical doctor on the day of her suicide. This same doctor had been in contact with her mother the prior week regarding her medication. I would be happy to answer any questions you have about how this case was handled.

Thank you for your attention to this matter.

Sincerely,

THIEL LAW OFFICE, PLLC



Matthew B. Thiel

MBT/leb  
Enclosure

1 **BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**  
2 **OF THE STATE OF MONTANA**

3 In the Matter of the Fair Hearing of  
4 Claimant One and Claimant Two

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**ORDER TO DISMISS**  
No. 05-571

5 **DISCUSSION**

6 The Claimant's motions to dismiss and for summary judgment cannot be granted on the  
7 grounds of subject matter jurisdiction or the grounds of procedural due process. The  
8 Department is correct that the Claimant One and Claimant Two are subject to the statutory child  
9 abuse and neglect laws as individuals responsible for the welfare of children, and that Claimant  
10 One and Claimant Two are not being denied procedural due process through this litigation. The  
11 Department is also correct that theories of agency cannot shield the Claimant One and Claimant  
12 Two from a substantiation proceeding brought by the Department. However, it is concluded  
13 that this case must be dismissed on two other grounds, which are: (1) that the Department has  
14 not afforded the Claimant One and Claimant Two substantive due process, and (2) because the  
15 Department cannot establish causation against the Claimant One and Claimant Two for the  
16 suicide of K.N.

17 The Department's case violates substantive due process because the Department alleges  
18 failures and omissions in an area where the Department has promulgated no rules or policies  
19 which apply to such allegations. The essence of substantive due process is protection from  
20 arbitrary and unreasonable state action, which is what we have here because the Department has  
21 given no advance notice of what it considers to be adequate standards for operation of a boarding  
22 school such as Academy (ACADEMY) as it relates to its allegations in this case. ACADEMY  
23 is not a treatment facility, counseling-based program or rehabilitation center and is not regulated  
24 or licensed by the Department.  
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1 It is concluded that the Department's case must also be dismissed because it is based on  
2 allegations which, having carefully reviewed the record, cannot be factually proven. The  
3 Department cannot establish causation, either direct or proximate, against the Claimant One and  
4 Claimant Two for the unfortunate suicide in this case which the record shows was a voluntary,  
5 intervening act committed by a pre-existingly depressed and suicidal 16 year-old girl, K.N. A  
6 preponderance of the evidence in this case shows that a substantiation of child abuse or neglect is  
7 not warranted and that the Department has not shown sufficient verifiable blame against  
8 Claimant One and Claimant Two on the element of causation for this case to go forward. This  
9 adolescent had a past history of suicidal tendencies prior to enrolling at ACADEMY, but had  
10 recently shown signs of attitudinal improvement and was voted off of high-risk status by  
11 numerous ACADEMY staff, none of which was Claimant One or Claimant Two. K.N.'s  
12 attitude had been improving in the days leading up to the incident and she was voluntarily  
13 cooperating by having entered into a no-harm contract wherein she promised that she would not  
14 hurt herself. K.N. promised that in the future she when she feels like hurting herself she would  
15 talk to someone about how she feels. There is no evidence that she talked to or even tried to talk  
16 to either Claimant One or Claimant Two prior to her suicide, nor that either Claimant One or  
17 Claimant Two ever had any direct contact with K.N. which caused her suicide. It also has not  
18 been established that any omission by the Claimant One and Claimant Two or ACADEMY  
19 operating procedures caused the suicide. It was K.N.'s mother (her enrolling Sponsor and legal  
20 guardian) who had not approved financial backing for a psychological evaluation for K.N. The  
21 enrollment contract expressly states that ACADEMY is not recommended for students that are  
22 suicidal and that ACADEMY does not provide clinical screening for the same. K.N. had been  
23 receiving some counseling through ACADEMY nevertheless. It was also stated in the  
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1 enrollment contract that although a high level of supervision is provided by the School there  
2 could be no guarantee that a risk such as suicide cannot happen at ACADEMY, just as this can  
3 happen anywhere in society. The factual record does not support the Department's allegations  
4 in many other areas. For example, the Department complains that K.N. was left unaccounted  
5 for long enough to be able to commit suicide, but the record shows that ACADEMY had  
6 numerous policies and procedures in place to keep track of the whereabouts of students including  
7 a head count form, tracking form, buddy system and staff personnel with walkie-talkies.  
8 Despite this protocol at ACADEMY, K.N. created for herself an opportunity to be alone long  
9 enough to voluntarily commit suicide. The Department has promulgated no rules or policies  
10 from which to determine whether these ACADEMY policies regarding the whereabouts of  
11 students were adequate safeguards. The Department also complains that K.N. was not given a  
12 suicide assessment where she could have been directly asked the question if she was suicidal, yet  
13 it was already a known fact that she had a suicidal history prior to entering ACADEMY and had  
14 been placed on high-risk for this sort of behavior. Hence, the Department has not established  
15 how an assessment would have revealed anything that was not already known or how an  
16 assessment would have made a difference. It appears that K.N. needed treatment not normally  
17 provided in a boarding school, or else she needed financial backing to pay for such services  
18 while at ACADEMY. The Department alleges that K.N. was being neglected at ACADEMY,  
19 but the record indicates that K.N. was receiving some therapy during her stay at ACADEMY and  
20 that she had seen a medical doctor on the day of her suicide who had been in contact with her  
21 mother during the prior week regarding her medication. The Department alleges that the  
22 structure of the ACADEMY program included isolation from family and friends as evidenced by  
23 K.N.'s inability to speak with her mother or anyone outside the ACADEMY program for over  
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1 seven months, yet the Department presented no evidence that ACADEMY ever denied K.N.'s  
2 mother access to her upon request. The record further indicates that the Department cannot  
3 prove its allegation that K.N. was placed in "solitary confinement" for periods of hours and  
4 sometimes days, but rather it shows that she was placed in what is called Intervention where the  
5 students must remain silent and compliant for only a half an hour and if they do then they are  
6 released. The Department alleges that "solitary confinement" was injurious to K.N.'s mental  
7 state, yet the record shows that in Intervention students are personally monitored by staff who  
8 coach and encourage the them (instead of punishing them with isolation and silence as was done  
9 in years past). There is no proof that K.N. was subjected to "solitary confinement" as that term  
10 is commonly understood and the causal link to show harm to K.N.'s mental state from  
11 Intervention is not present in the record. Rather, Claimant One and Claimant Two are correct  
12 that the record shows that the Department's case is based largely on speculation, just as K.N.  
13 acknowledged in her suicide note written the day of the act that everyone was trying to help her  
14 but that she felt that she was not getting better for many reasons which she could not explain.  
15 This certainly leaves us with ample speculation and an insufficient showing of wrongdoing from  
16 which to conclude that the Claimant One and Claimant Two are guilty of child abuse or neglect.

### 18 ORDER

19 In sum, this matter is hereby dismissed on the grounds that the Department has failed to  
20 provide substantive due process in bringing its allegations in this case, and because the  
21 Department has not shown that it can establish causation against the Claimant One and Claimant  
22 Two for K.N.'s suicide.  
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1 **NOTICE:** This Order may be appealed to a Montana district court for judicial review  
2 pursuant to § 2-4-701 MCA. Proceedings for judicial review must be instituted by filing a  
3 petition in district court within 30 days from the mailing date shown below.

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5  
6 **DATED** this \_\_\_\_\_ day of September 2005.

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11 \_\_\_\_\_  
12 Joseph P. Sternhagen  
13 Hearings Officer

14 **CERTIFICATE OF SERVICE BY MAIL**

15 I hereby certify that I have mailed a true and correct copy of the foregoing ORDER TO  
16 DISMISS by depositing the same in the U.S. Mail, postage prepaid, on this \_\_\_\_\_ day of  
17 September 2005, at Helena, Montana, as follows:

18 Matthew B. Thiel  
19 SMITH & THIEL LAW OFFICES  
20 315 W. Pine Street  
21 POB 7337  
22 Missoula, MT 59807

23 William L. Crowley  
24 BOONE KARLBERG PC  
25 201 W. Main, Ste. 300  
Missoula, MT 59802

cc: Brenda Wahler, OLA

18  
19  
20 \_\_\_\_\_  
21 Bonnie Brown  
22 Administrative Assistant